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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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Federal-State Joint Board on

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CC Docket No. 96-45

Universal Service

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**COMMENTS OF CITIZENS UTILITIES COMPANY ON THE
NOTICE OF PROPOSED RULEMAKING AND
ORDER ESTABLISHING JOINT BOARD**

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TABLE OF CONTENTS

Summary	-ii-
I. Introduction	-1-
A. The Citizens Companies	-1-
B. The Interest of the Citizens Companies in this Proceeding	-2-
II. Services That Should be Included Under the Universal Services Rubric	-4-
III. The Starting Point for a New Federal Universal Service Support Paradigm: A Phased Transition of Implicit Subsidies from Access Charges	-7-
IV. Support for Rural, Insular and High-Cost Areas	-9-
A. Step One: Determination of Services for Inclusion under the Universal Service Rubric	-9-
B. Step Two: Creation of Necessary National Price Affordability Standards	-10-
C. Step Three: Eligible Carrier Universal Service Costing Principles	-12-
D. Jurisdictional Issues	-15-
V. Low-Income Consumer Support	-17-
VI. Support for Telecommunications Services to Rural Health Care Providers and Qualifying Schools, Libraries	-18-
A. Health Care Providers for Rural Areas	-18-
B. Educational Providers and Libraries	-20-
VII. The Mechanics of the Federal Universal Service Support Fund	-21-
Conclusion	-22-

Summary

The Citizens Companies believe that the evolutionary nature of universal service contemplated in Section 254(c)(1) of the Communications Act of 1934, as amended, is a clear directive that the list of services receiving universal service treatment not remain static. Equally clear is the Section's purpose that universal service concept not become a vehicle for industry funding of every imaginable telecommunications service. Instead, a sound reading of Section 254, in its entirety, leads to only one possible conclusion -- the inclusion of services within the universal services rubric must follow a measured process involving the weighing and balancing of the Section 254(c)(1) definitional criteria. The new statutory universal service directive seeks to ensure that fundamental telecommunications services, *i.e.*, universal services, are provided in accordance with the Section 254(b) principles, not that every possible telecommunications service should be made available at industry-subsidized rates.

As the starting point to a new federal universal service paradigm, the Citizens Companies support a phased transition of implicit subsidy elements, *e.g.*, the carrier common line element (including long-term support) and the residual interconnection charge, from the interstate access charge structure into the interstate subscriber line charge element and, to the extent necessary, a federal universal service support mechanism.

Support for rural, insular and high-cost areas should be addressed as follows: (1) determine what services should be included; (2) develop national price affordability standards for those services; (3) create a flexible eligible carrier cost proxy system to measure the gap between an eligible carrier's costs and the national price affordability standards for purposes of measuring support; and (4) allow the states to create their own definitions of support-eligible services and affordability levels, subject

to their creation of intrastate funding mechanisms. Low-income support should be through an expanded Lifeline program.

One area of major concern in considering discounts for qualified schools and libraries is the potential impact upon the size of the universal service support system. Absent reasonable constraints upon the size of discounts, the burden imposed upon the universal service funding mechanism could be staggering. The discount rate should be that which is appropriate and necessary to ensure affordable access and use of such services by eligible schools and libraries. In the interest of controlling the size of the universal service support fund, the percentage discounts should be limited in size.

A neutral party should administer the operations of the federal universal service support fund. Second, the collection of contributions for support should, at the federal level, be a percentage of telecommunications carriers' revenues from both inter- and intrastate services, less amounts paid to other carriers for access or resold services. Netted against such contribution charges would be contribution credits received for the provision of universal services by a carrier certified as eligible under Section 214(e) of the Act or by any carrier pursuant to Section 254(h)(1)(A) and (B). At such time as the state designates a second eligible carrier in a given service area, the same amount of high-cost and Lifeline funding that was available to the incumbent eligible carrier should be converted to a "virtual voucher" distribution methodology for application by consumers in the service area to the universal service portion of the bill of their provider of choice.

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Citizens Utilities Company, on behalf of itself and its telecommunications divisions and subsidiaries (hereinafter referred to, collectively, as the "Citizens Companies"), by its attorney, hereby submits its comments on the Notice of Proposed Rulemaking and Order Establishing Joint Board issued on March 8, 1996, initiating the above-styled proceeding (the "*NPRM*"), and shows as follows:

I. Introduction

A. The Citizens Companies

Citizens Utilities Company, through divisions and subsidiaries, provides telecommunications services, electric distribution, natural gas transmission and distribution and water and waste water treatment services to more than 1,600,000 customer connections in 20 states. The Citizens Companies' Telecommunications Sector, provides local exchange telephone services in suburban and rural exchange areas in Arizona, California, Idaho, Montana, Nevada, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Utah and West Virginia. In addition, Citizens Telecommunications Company, a Citizens' subsidiary, provides interexchange services throughout the nation. Finally, another Citizens' subsidiary, Electric Lightwave, Inc., provides competitive local exchange and interexchange services in several Far Western states.

B. The Interest of the Citizens Companies in this Proceeding

The Citizens Companies support a procompetitive policy of opening local exchange markets (including those in which it provides local exchange services) to usher in robust competition. This policy is driven by the Citizens Companies' evolution away from the dated industry division into local exchange and interexchange niches. Instead, the Citizens Companies' thrust is to meet burgeoning consumer demand for comprehensive, sophisticated telecommunications services at market-based prices. Eschewing the monopoly era thinking that "pigeon-holed" carriers into rigid local exchange and interexchange carrier classifications, the Citizens Companies are quickly moving to become an integrated telecommunications distribution platform provider of a complete and changing array of telecommunications products. In the view of the Citizens Companies, achievement of this paradigm is a condition precedent to meeting customer demand in the new era heralded by the recent enactment of the Telecommunications Act of 1996. The market will no longer tolerate the old fashioned regulatory paradigm that effectively forced customers to deal with multiple service providers to meet their total telecommunications needs.

The Citizens Companies are a microcosm of the entire telecommunications industry as collective providers of "traditional" local exchange, competitive local exchange, information, and long distance telecommunications services. The Citizens Companies' integration of formerly disparate industry segments into a unified telecommunications enterprise is the product of weighing and balancing competing interests similar in concept to what regulators must do on a macro scale. In no small measure, this weighing and balancing process mirrors state and federal efforts addressing universal service issues and related funding programs. The Citizens Companies have actively participated in past federal USF proceedings and in similar proceedings in numerous states. In the

view of the Citizens Companies, achievement of the goals expressed by Congress in enacting new Section 254 of the Communications Act of 1934, as amended (the "Act"), is fundamental to the development of meaningful competition in the telecommunications industry and full achievement of the Citizens Companies' goal of becoming an integrated telecommunications service provider.

A clear nexus exists between successful execution of Section 254's universal service mandates and achievement of the Act's overarching goal of opening the nation's local exchange markets to competition. Implicit subsidization of universal services must be supplanted by rate rebalancing, *i.e.*, the movement of rates to costs and, to the extent necessary, an explicit universal service support methodology.^{1/} The Sections 251 and 252 interconnection requirements will, if allowed to function according to their terms, undermine the present implicit subsidy system, a circumstance that Congress clearly intended. It is imperative that the FCC and state regulators move with all deliberate speed to accommodate the inexorable change that will occur in local exchange telephony by wringing implicit subsidies out of local exchange and access rate structures. Rate rebalancing is unavoidable, necessitating a new universal service support system to accommodate any resulting affordability issues.

Congress clearly recognized the nexus between local exchange competition and universal service issues in crafting the Act Section 251(f)(1) rural telephone company exemption from the exacting Section 251(c) incumbent local exchange company interconnection requirements. One

^{1/} See Joint Statement of the Committee of Conference, H.R. Rep. 104-458, 104th Cong., 2d Sess. 131, where it is stated:

To the extent possible, the conferees intend that any support mechanism continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today.

criterion for state commission termination of the exemption is a finding of consistency with Section 254. The Citizens Companies submit that, until the FCC and the states have fostered the necessary rate rebalancing and universal service support process envisioned by the rural telephone company exemption, no justification exists for the exemption's termination as to an affected rural telephone company. To the extent that regulatory authorities fail to carry out their responsibilities in this regard, the full measure of competition envisioned by Congress will be frustrated.

II. Services That Should be Included Under the Universal Services Rubric

One of the fundamental tasks facing the Joint Board and ultimately the Commission in promulgating new universal service rules is correctly reconciling Congressional intent underlying the universal service principles of Section 254(b) of the Act with the Section 254(c)(1) definition of universal service.^{2/} An unduly liberal reading of the two subsections could lead to the untenable conclusion that, after giving some consideration to the Section 254(c)(1) criteria, virtually any telecommunications service could be deemed eligible for universal service support. Viewing the new statutory universal service policy as a "Christmas tree" to accommodate any possible desire for telecommunications services without imposition of direct costs upon cost causers would impose an impossible social burden upon the telecommunications industry. Even worse, it could stifle market entry by new players.

A more reasoned and reasonable reading of Sections 254(b) and (c)(1) is to deem the Section 254(c)(1) definitional criteria to be mandatory considerations before specific telecommunications services can be classified as part of universal service. Once a service is so classified, its treatment

^{2/} The reconciliation would be easier and, perhaps, unnecessary, had the universal service definition subsection preceded the universal service principles subsection.

is dictated by application of the Section 254(b) principles. In this way, the Section 254(c)(1) definitional criteria will serve the role that the Citizens Companies believe Congress intended -- as an evidentiary threshold to universal service classification. While it is beyond argument that Congressional intent behind enactment of Section 254 is to expand the scope of universal service beyond traditional concepts, it is equally obvious that Section 254(c)(1) is intended to impose a measured, thoughtful approach to universal service analysis in order to prevent the program from becoming an unbridled wealth redistribution process.

The Citizens Companies believe that the evolutionary nature of universal service contemplated in Section 254(c)(1) of the Act is a clear directive that the list of services receiving universal service treatment not remain static. Equally clear is the Section's purpose that the universal service concept not become a vehicle for industry funding of every imaginable telecommunications service. Instead, a sound reading of Section 254, in its entirety, leads to only one possible conclusion -- the inclusion of services within the universal services rubric must follow a measured process involving the weighing and balancing of the Section 254(c)(1) definitional criteria. The new statutory universal service directive seeks to ensure that fundamental telecommunications services, *i.e.*, universal services, are provided in accordance with the Section 254(b) principles, not that every possible telecommunications service should be made available at industry-subsidized rates.

Correct application of the Section 254(c)(1) definitional criteria involves a weighing and balancing process, rather than deeming as dispositive any single criterion. For example, residential voice-grade access to the public switched network, access to 911/E911 and access to operator services clearly meet the Section 254(c)(1)(A), (C) and (D) criteria. However, these services arguably do not meet the (B) criterion of having been chosen, through operation of market choices,

by a majority of residential customers. These services are properly included as universal service support eligible because they are now essential to modern life, not because they are, through operation of market choices, widely subscribed to by residential consumers. This essentiality to modern life is captured in the Section 254(c)(1)(A), (C) and (D) criteria. Conversely, while touch-tone and single party service may not be absolutely essential to education, public health or public safety, they clearly meet each of the other three Section 254(c)(1) definitional criteria, particularly in their popularity with and acceptance by a substantial majority of residential customers.^{3/}

A more painstaking analysis is required when addressing telecommunications services other than the foregoing core residential services. For example, it is not self-evident that even the most basic of business services meet the Section 254(c)(1)(A) criterion of essentiality to education, public health or public safety. Certainly, such services do not meet the Section 254(c)(1)(B) residential acceptance criterion. Such services meet the Section 254(c)(1)(C) deployment criterion in all but unserved areas. In order to establish such services as universal service eligible despite their not meeting the Section 254(c)(1)(A) and (B) criteria, specific evidentiary findings are necessary to establish eligibility as being consistent with the Section 254(c)(1)(D) public interest, convenience and necessity standard.

The Citizens Companies believe that the only services presently meeting the Section 254(c)(1) threshold standards for universal service support are core residential services, *i.e.*, residential single party access lines, tone dialing, access to long distance carriers, access to operator

^{3/} The *NPRM* ¶¶ 19 and 20 discussion of touch-tone and single party services presents a classic “chicken and egg” problem. While it is likely, as the Commission suggests, that these services have become essential to education, public health and safety, they did not become so until the majority of residential customers, through operation of market choice, subscribed to them.

and directory services and access to 911/E-911 services. Further, in some extreme high-cost areas, rates for the core business service, *i.e.*, B-1 lines, may be substantially below-cost or would be unaffordable if market rates were allowed. In such instances, when proven, a need for high-cost support may exist. As discussed more particularly in Section IV(A), below, a national price affordability standard for core business service, if found to be part of universal service, should be different from the national price affordability standard for core residential services. Finally, insofar as support for the provision of core residential services to low-income individuals is concerned, the Citizens Companies recommend an expanded Lifeline program, as discussed in Section V, below.

III. The Starting Point for a New Federal Universal Service Support Paradigm: A Phased Transition of Implicit Subsidies from Access Charges

The Citizens Companies support a phased transition of implicit subsidy elements, *e.g.*, the carrier common line element (including long-term support) and the residual interconnection charge, from the interstate access charge structure into the interstate subscriber line charge element and, to the extent necessary, a federal universal service support mechanism.^{4/} This transition of the implicit subsidy load from the interstate access charge structure to network end users and a federal universal service support mechanism is compelled by Sections 254(d) and (e) of the Act and is a condition precedent to the full and fair development of competition. In addition, basic economics suggests that the costs of network access should, in the first instance, be borne by the actual cost causer -- the end user connected to the network.

^{4/} DEM weighting is arguably an explicit subsidy procedure. If it is terminated, the dollars involved should be shifted to the intrastate jurisdiction for recovery as part of a general local exchange rate rebalancing process.

Avoidance of end user rate shock is a necessary element in this proposed transitional “unloading” of implicit subsidies from the interstate access structure. Accordingly, the Citizens Companies propose a three-year transition process in which (i) the federal subscriber line charge would be equalized for all services, *i.e.*, ending the disparate treatment of residential, single business lines and all other access lines; and (ii) recovery of the implicit subsidies now inherent in the federal carrier common line charge would be shifted to the federal subscriber line charge. In light of the statutory injunction against continuation of implicit subsidy schemes and the new universal service funding arrangement proposed herein, little justification exists for maintaining “class of service” distinctions in the federal subscriber line charge.

To the extent that the FCC deems a federal subscriber line rate for a Section 214(e) eligible carrier to exceed an affordability threshold, it could cap the rate at a certain level, with the balance of the costs recovered from the federal universal service support fund. However, an eligible carrier’s federal subscriber line charge is an indispensable part of the total cost of a given service to the customer. The federal subscriber line charge is, in reality, part of each carrier’s total local exchange service price, notwithstanding its jurisdictionally-allocated derivation. Rather than looking at the affordability of the federal subscriber line charge in isolation, it may be more appropriate for the Commission to look at the total end user cost for a service, including the subscriber line charge, in determining affordability of a universal service. Regardless of whether the subscriber line charge is viewed in isolation or as part of the total cost of service to end users, the universal service support mechanism is the appropriate funding vehicle for recovery of the difference between the affordable price, as determined by regulators, and the cost of providing the service.

The phased transition of implicit subsidies out of federal access charges into the federal subscriber line charge and, if necessary, into the federal universal service mechanism, should not be permitted to provide a windfall to interexchange carriers. Interexchange carriers should be mandated to flow through to their customers, on a dollar-for-dollar basis, the interstate access charge savings represented by the transitional movement of implicit subsidies out of the interstate access structure. In particular, great care must be taken to ensure that residential and single business line customers receive the lower interstate long distance rates they are entitled to as a result of the proposed increase in the federal subscriber line charge.

IV. Support for Rural, Insular and High-Cost Areas

A. Step One: Determination of Services for Inclusion under the Universal Service Rubric

In Section II, above, the Citizens Companies discussed in detail their position on the methodology for determining whether a given telecommunications service is classifiable as part of universal service. This is the obvious first step in determining eligibility for federal support funding in rural, insular and high-cost areas.

To the extent that services other than core residential services, as defined in Section II, above, are deemed eligible for universal service support, consideration must be given to creation of service “baskets” containing like services that should have the same price affordability standard. For example, a price affordability standard for single business lines (if found to be properly includable in the universal service classification) may be found to be different from the standard for core residential services.

B. Step Two: Creation of Necessary National Price Affordability
Standards

One of the most glaring flaws in the present federal universal service fund program is the lack of any correlation between reported carrier costs and end user rates. The issue of universal service affordability under this system is, at best, only obliquely addressed. Further, the preexisting system gives no incentive to achievement of cost savings and other efficiencies by support recipients. Finally, it fails to give the states any real incentive to rebalance local exchange rates and, if necessary, create their own universal service plans. The current system is obsolete and must be rebuilt from the ground up.

The Citizens Companies believe that the Section 254(b) universal service principles, coupled with Section 254(e), dictate a significant degree of national support for universal service in rural, insular and high-cost areas, in general, not just to the extent of the jurisdictional allocation of costs. Absent such an approach, the achievement of the universality aspect of the universal service concept is improbable.

The Citizens Companies recommend that the Commission set a national price affordability standard for each universal service basket at the inception of the new universal service support mechanism. A national price affordability standard would be based upon the total unseparated cost to end users for the service at issue and must, of necessity, give consideration to consumer ability to pay the full cost of the service. The recommended national price affordability standard for a universal service basket is one standard deviation above the national average rate for the service(s) within a given basket, as determined by the Commission in a survey process, plus the federal subscriber line

charge.^{5/} Setting the price affordability standard at just the national average rate would minimize states' incentive to eliminate implicit intrastate subsidies through local exchange rate rebalancing. Periodic, future adjustments are necessary to national price affordability standards to account for inflation and/or pricing changes.

The concept of national price affordability standards for universal service baskets is a necessary ingredient to achievement of the Section 254(b)(3) principle of universal service quality and pricing comparability between rural, insular and high-cost areas, on the one hand, and urban areas, on the other. Of necessity, the averaging process in arriving at a national price affordability standard means an explicit export of funding dollars from urban and low-cost areas to support universal service provision in rural, insular and high-cost areas. The Citizens Companies believe this to be exactly the Congressional intent in promulgating Section 254 of the Act.

The dual jurisdictional nature of new Section 254's universal service policies suggests states' freedom to create their own affordability standards. The setting of national price affordability standards for universal service baskets does not in any way impede the ability of the states to create their own affordability standards for the same services. In fact, as discussed in Section IV(D), below, the states can do so to the extent they believe that local conditions dictate a different standard.^{6/} Differing state price affordability standards would have no impact upon the federal universal service mechanism because the states would need to create their own universal service mechanism to fund

^{5/} The federal subscriber line charge must be added to the intrastate rate for the service at question in order to ascertain the service's total cost to the network end user.

^{6/} This is not to suggest, however, that the Citizens Companies believe that a state should adopt different price affordability standards. To do so would increase the size and burden of funding an intrastate universal service fund.

the difference between eligible carrier costs and the state affordability standards, net of funds received from the federal program. Since the federal program might feature a higher affordability standard than a state price affordability standard for the same service, the state would be responsible for funding the difference.

C. Step Three: Eligible Carrier Universal Service Costing Principles

Once a national price affordability standard is created for a universal service basket, it is then necessary to ascertain whether an eligible carrier's cost of providing that service exceeds the standard. The extent to which it does represents the measure of high-cost support required from the federal universal service mechanism.

The costs associated with providing a universal service should be disaggregated and reported on a basis smaller than current study areas.⁷¹ Such disaggregation of costs will further the principle of targeting funding to eligible carrier service areas where it is needed. In addition, disaggregation will result in units of size that are small enough to feature reasonably homogenous cost-of-service profiles and will eliminate the present effect of averaging away differences in costs between high- and low-cost exchanges.

The Citizens Companies do not believe, however, that disaggregation down to census block groups is an appropriate methodology. Existing local exchange carrier ("LEC") networks do not conform to census blocks. Instead, LEC networks and cost data are generally based upon network units no smaller than wire centers and often as large as exchange areas. These network units are well known and sufficiently small in size to represent reasonably homogenous cost characteristics. The

⁷¹ Section 214(e)(5) of the Act contemplates possible revamping of study areas for rural telephone companies.

Citizens Companies' LECs, which operate in suburban and rural exchange areas, cannot readily adapt to the use of census blocks for cost disaggregation without incurring potentially vast expenses. Accordingly, disaggregation of costs within a study area or study area redefinitions should contemplate network units no smaller than wire centers. The use of exchanges or wire centers would be appropriate.

The Citizens Companies believe that a properly designed and implemented proxy model, reflecting the foregoing geographic analysis principles, is a critical component in determining the cost of universal service. A proxy model can be designed to estimate accurately the cost of universal service, while easing the administrative burden associated with determining a carrier's costs. However, a proxy model must be viewed in the context for which it is used. The model should be viewed as a tool for measuring the cost of universal service, but regulators must set sound policies to ensure that the cost data is properly utilized.

Of the proxy cost models currently under discussion in the industry, the Citizens Companies believe the Pacific Bell Cost Proxy Model ("CPM") can be best adapted to accurately estimate the costs of universal service. The CPM has the flexibility to measure both the aggregate costs for multiple carriers and the costs of individual companies. However, the Citizens Companies' support of the CPM is qualified; the CPM is still being refined and needs additional work and analysis to be fully acceptable.

The Citizens Companies caution that the CPM or any model cannot be used in isolation. Sound universal service principles dictate consideration of individual company characteristics, current implicit subsidy mechanisms and the continuing evolution of the scope of universal service. Flexibility in the model is critical because of the huge number of local exchange carriers and the disparate nature

of the areas they serve. Some of these providers serve a combination of urban and rural territories, while others serve mainly rural areas. The size of the providers varies significantly. In addition, the choice and level of technology varies among providers and will continue to evolve. Thus, no two providers will have the exact same cost characteristics, and a proxy model must be flexible enough to account for these cost differentials without imposing an onerous administrative burden on the Commission or the providers. Use of company-specific inputs into the CPM (or other proxy models) will recognize these differences. If costs other than company-specific costs are used, companies with below-average costs could receive a windfall and companies with above-average costs could be unfairly penalized.

The CPM and other proxy models^{8/} are generally based on forward looking costs, an appropriate measure being Total Service Long Run Incremental Cost ("TSLRIC"), plus a reasonable contribution toward shared and common costs. TSLRIC is the additional cost to a firm to provide a service, including service-specific fixed and variable costs. The TSLRIC of a service excludes direct costs of other services and unattributable costs such as common overhead expenses. In order to remain a viable business, however, a firm must recover a positive contribution toward its shared and common costs in pricing a service.

Immediate adoption of a TSLRIC-based (or even TSLRIC plus a positive contribution to shared and common costs) universal service costing methodology for measuring the cost of universal service for rural telephone companies, as defined in Section 3(a)(47) of the Act, could impose an undue financial burden. Such carriers generally have a disproportionately high investment in meeting

^{8/} For example, the Benchmark Cost Model jointly sponsored by US West, NYNEX, MCI and Sprint.

“carrier-of-last resort” obligations in rural areas. A three-year transition from fully distributed costs to proxy model costs for rural telephone companies would ease this burden. After the three-year transition period, the cost of universal service for small companies would also be established by the proxy model.

A three-year transition period will allow rural telephone companies the opportunity to recover at least part of their regulatory-driven depreciation reserve deficiencies. These depreciation reserve deficiencies, in significant measure, resulted from investment in furtherance of carrier-of-last resort obligations, with recovery deferred by regulators to keep rates artificially low. These investments were made predicated upon an implicit regulatory promise that full investment recovery (of prudent capital investment) would occur, although in a greater amount of time than would have been the case if normal depreciation practices had been allowed.

D. Jurisdictional Issues

It is improbable that the states can or should continue to rely upon implicit subsidy flows from intrastate access charges and other nonresidential services to support below-cost local exchange services. Congress, in promulgating the Act’s Sections 251 and 252 interconnection imperatives and Section 254(f), has created the tools for achievement of the local exchange competition that will undermine continued intrastate implicit subsidization of local exchange services. Because of the dramatic changes that will take place in local exchange telephony in the near future, it is critical that the FCC and the states closely coordinate the universal service efforts necessary for achievement of Congressional goals.

In Sections IV(A), (B) and (C), above, the Citizens Companies recommend a methodology for eliminating the implicit subsidies now in interstate access charges and for funding eligible carriers’

costs of providing universal services that exceed the national price affordability standards. A substantial portion of the costs of these fundamentally intrastate services in rural, insular and high-cost areas would, in this model, be spread across the entire nation. This federalization of a portion of the support for universal service in rural, insular and high-cost areas does not, however, relieve the states of meeting their obligations in furthering national universal service goals.

National price affordability standards for universal services created by the FCC should serve as targets for local exchange service rate rebalancing efforts where intrastate rates are below the standards. As proposed by the Citizens Companies, the federal support fund will address differences between national price affordability standards and eligible carriers' costs. Further, the states can adopt a more expansive level of telecommunications services eligible for support and/or choose affordability standards lower than the national price affordability standards. In either case, the state would be required to create its own high-cost fund in order to cover what the federal high-cost fund does not cover.^{9/} A gap resulting from a state deviation from federal universal service classification and affordability standards cannot be filled by continuation of implicit subsidy arrangements. The Citizens Companies do not believe that the states should, as a general proposition, deviate from federal universal service classifications and price affordability standards. Such deviation would place additional burdens upon telecommunications carriers and might serve as an impediment to market entry.

^{9/} It is theoretically possible, but highly unlikely, that a state might set an affordability standard higher than the national standard. In this case, of course, no federal support would be available.

V. Low-Income Consumer Support

A core universal service principle is that, in addition to rural, insular and high-cost areas, the needs of low-income consumers, regardless of location, must be addressed.^{10/} The Citizens Companies believe support of low-income consumers should, at the federal level, be accomplished through expansion of the existing Lifeline program. The Lifeline program, including elements requiring state funding participation and consumer eligibility standards, should be expanded beyond its present federal subscriber line charge scope to embrace an eligible consumer's total monthly cost of universal service. An expanded Lifeline program would address more than just the interstate portion of eligible consumer's costs of universal service; it would become another facet of the overall national universal service program.

As part of the national universal service support system, providers of the expanded Lifeline service would have to be qualified as eligible carriers under Section 214(e) of the Act. Under the Citizens Companies' proposal, expanded Lifeline would be funded from the federal universal service support system, subject to state matching fund requirements similar in scope to those in the present FCC Lifeline rules.

The Citizens Companies take no position on whether additional means to attract and keep low-income customers on the network, such as "free" toll blocking or placing "credit limits" on toll services, should be deemed part of universal service. If such mechanisms are made elements of universal service, they should become part of the Lifeline portion of federal universal service support. The costs of these features, if part of universal service, should be borne by the entire universe of telecommunications carriers contributing to universal service support for several reasons: (i) because

^{10/} See Section 254(b)(3) of the Act.

it is required by Sections 254(b)(5) and (d) of the Act; (ii) because having these customers on the network is a general social good;^{11/} and (iii) the telecommunications industry, as a whole, benefits from having the maximum number of individuals connected to and using the network.

VI. Support for Telecommunications Services to Rural Health Care Providers and Qualifying Schools, Libraries

A. Health Care Providers for Rural Areas

In paragraph 90 of the *NPRM*, the Commission proposes, under Section 254(c)(3) of the Act, to designate services, in addition to those classified as being universal services under Section 254(c)(1), that should receive universal service treatment pursuant to Section 254(h)(1)(A). However, such designation is not mandatory -- Section 254(c)(3) uses the phrase “may designate,” rather than “shall designate.” The Citizens Companies do not believe that it would be productive for the Commission and the public to attempt to anticipate every type of service that every qualifying rural health care provider might conceivably require. Invariably, the list will miss services that some health care provider needs and/or fail to anticipate services that are not yet deployed. Instead, the better course of action is allow the parties to negotiate technical arrangements.^{12/} In the event that an issue of technical feasibility or reasonableness of the requested service arises, issues under the Section 254(c)(1)(C) and (D) criteria, regulatory resolution should be sought.^{13/}

^{11/} See Sections 254(b)(3) and (c)(1)(A) of the Act.

^{12/} In these negotiated arrangements, the rural health care provider should be required to warrant its eligibility for Section 254(h)(5) eligibility. This should address the Commission’s concern in ¶103 of the *NPRM*.

^{13/} Unlike Section 254(h)(1)(B), Section 254(h)(1)(A) is not, by its terms, limited in scope to telecommunications carriers in the same geographic area as a service requester. Issues may arise as to whether a carrier with no facilities in the area in which the requester is located can be

(continued...)

Finally, the Citizens Companies share the Commission's quandary, as stated in paragraph 105 of the *NPRM*, regarding Congressional intent behind the language that telecommunications carriers providing service under Section 254(h)(1)(A),

shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as part of its obligation to participate in the . . . universal service [mechanisms].

In contrast, Section 254(h)(1)(B), dealing with educational providers and libraries, has a clearly described mechanism for telecommunications carriers either to offset the amount of discounts extended against universal service contributions or to receive reimbursement from universal service mechanisms. Neither section requires that the telecommunications carriers providing service be Section 214(e) carriers eligible to receive other types of universal service support. The Citizens Companies believe, however, that it is a carrier's possession of Section 214(e) eligible carrier status that dictates the difference between the two statutory sections' universal service treatment.

Section 254(h)(1)(A)'s treatment of the difference, if any, between, the rate to a rural health care provider and the rate other customers in comparable rural areas as part of the telecommunication provider's universal service obligation appears to mean two things: (1) that Section 214(e) eligible carriers, which are by definition eligible for universal service support, are entitled to claim reimbursement from the support fund when they are serving the qualifying rural health care provider; and (2) if a telecommunications carrier that is not a Section 214(e) eligible provides the service, it is entitled to take an offset against its universal service contribution. In contrast, Section

^{13/}(...continued)
compelled to extend service to an eligible rural health care provider.

254(h)(1)(B) specifically allows any telecommunications carrier, not just Section 214(e) eligibles, to elect to either have the amount of discounts for services to schools and libraries reimbursed from the support fund or offset against universal service contributions.

B. Educational Providers and Libraries

The Citizens Companies agree with the FCC's proposal that all services meeting the universal service definitional criteria of Section 254(c)(1) should be made available to qualifying schools and libraries at a discount.^{14/} However, the Citizens Companies, for the same reasons advanced in Section VI(A), above, do not agree that any need exists to attempt to designate services that should be provided to schools and libraries.^{15/} The schools and libraries are in the best position to know their technical needs and should negotiate with telecommunications carriers to meet them. In reality, the need for regulatory intervention regarding service requests by qualifying schools and libraries. Section 254(h)(1)(B)'s extension of universal service offsetting credits or reimbursement to all telecommunications carriers, not just Section 214(e) eligibles, should spur competition to provide service. This will ensure that qualifying schools and libraries receive the service packages that best meet their needs.

The one area in which concrete Commission guidance may be mandatory -- the impact of school and library discounts upon universal service funding -- presents one of the thorniest issues in the entirety of the Telecommunications Act. Absent reasonable constraints upon the size of discounts, the burden imposed upon the universal service funding mechanism could be staggering. Reasonability benchmarks for educational and library discounts must be considered in order to save

^{14/} *NPRM*, at ¶77

^{15/} *Id.*, at ¶78.

the universal service mechanism from becoming the telecommunications industry's version of the federal Social Security system. The discount rate should be that which is appropriate and necessary to ensure affordable access and use of such services by eligible schools and libraries. In the interest of controlling the size of the universal service support fund, the percentage discounts should be limited in size.

VII. The Mechanics of the Federal Universal Service Support Fund

Newly enacted Section 254 of the Act embodies the bulk of the core principles pertaining to the mechanics of universal service support that the Citizens Companies have sponsored throughout the course of earlier universal service proceedings before the FCC and multiple state regulatory bodies. Little point would be served by repeating the Act's Section 254(b)(4) and (5), (d) and (e) requirements or the Section 214(e) support eligibility standards. Instead, this section of the Citizens Companies' comments will address additional, necessary mechanical requirements for functioning of the federal universal service support system.

First, a neutral party should administer the operations of the federal universal service support fund. This will eliminate any perception that the support fund is a creature of incumbent LECs. Second, the collection of contributions for support in rural, insular and high-cost areas for support to low-income consumers and for support of health care providers in rural areas, educational providers and libraries, should, at the federal level, be a percentage of telecommunications carriers intra- and interstate revenues, less amounts paid to other carrier's for access or resold services. Netted against such contribution charges would be contribution credits received for the provision of universal services by a carrier certified as eligible under Section 214(e) of the Act or by any carrier